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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,461	05/25/2005	Patrick Jelf Crowley	70160	5065

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PATENT AND TRADEMARK DEPARTMENT
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GREENSBORO, NC 27409

EXAMINER	
MABRY, JOHN	

ART UNIT	PAPER NUMBER
1625	

MAIL DATE	DELIVERY MODE
04/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/536,461	CROWLEY, PATRICK JELF	
	Examiner	Art Unit	
	John Mabry, PhD	1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 May 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/01/06, 5/25/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. Said claims need to completely independent of Specification. Claims should not refer to Specification which can be included in claim.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. The Specification describes many processes of preparing compounds according to claim 1. Which process of preparing does Applicant intend to claim? It is not clear to the Examiner which process of making Applicant intends to claim.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for Y=H, X=Cl, R1=unsubstituted alkyl, R2=H, R3 and R4=CH3, R5=alkyl unsubstituted and substituted with hydroxyl, alkoxy, does not

reasonably provide enablement for R2, R3, R4, R5, X and Y being and substituted by the following:

X and Y are independently C_{1-6} alkyl, halo(C_{1-4})alkyl, C_{2-4} alkenyl, halo(C_{2-4})alkenyl, C_{2-4} alkynyl, halo(C_{2-4})alkynyl, C_{1-4} alkoxy, halo(C_{1-4})alkoxy, -S(O)$_n$(C_{1-4})alkyl where n is 0, 1 or 2 and the alkyl group is optionally substituted with fluoro, -OSO$_2$(C_{1-4})alkyl where the alkyl group is optionally substituted with fluoro, cyano, nitro, C_{1-4} alkoxycarbonyl, -CONR'R", -COR', -NR'COR", -NR'CO$_2$R"' where R' and R" are independently H or C_{1-4} alkyl and R"' is C_{1-4} alkyl, or optionally substituted phenyl, or Y is H;

R_2 is C_{1-4} alkyl, C_{1-4} alkoxymethyl or benzyloxymethyl in which the phenyl ring of the benzyl moiety is optionally substituted with C_{1-4} alkoxy;

R_3 and R_4 are independently H, C_{2-3} alkenyl or C_{2-3} alkynyl provided that both are not H and that when both are other than H their combined total of carbon atoms does not exceed 4, or R_3 and R_4 join with the carbon atom to which they are attached to form a 3 or 4 membered carbocyclic ring optionally containing one O, S or N atom and optionally substituted with halo or C_{1-4} alkyl; and

R_5 is H, C_{1-4} alkyl or C_{3-6} cycloalkyl in which the alkyl or cycloalkyl group is optionally substituted with halo, cyano, C_{1-4} alkylcarbonyloxy, aminocarbonyloxy, mono- or di(C_{1-4})alkylaminocarbonyloxy, -S(O)$_n$(C_{1-6})alkyl where n is 0, 1 or 2, triazolyl, tri(C_{1-4})alkylsilyloxy, optionally substituted phenoxy, optionally substituted thienyloxy, optionally substituted benzyloxy or optionally substituted thienylmethoxy, or

R_5 is optionally substituted phenyl, optionally substituted thienyl or optionally substituted benzyl, in which the optionally substituted phenyl and thienyl rings of the X, Y and R_5 values are optionally substituted with one, two or three substituents selected from halo, hydroxy, mercapto, C_{1-4} alkyl, C_{2-4} alkenyl, C_{2-4} alkynyl, C_{1-4} alkoxy, C_{2-4} alkenyloxy, C_{2-4} alkynyloxy, halo(C_{1-4})alkyl, halo(C_{1-4})alkoxy, C_{1-4} alkylthio, halo(C_{1-4})alkylthio, hydroxy(C_{1-4})alkyl, C_{1-4}alkoxy(C_{1-4})alkyl, C_{3-6} cycloalkyl, C_{3-6} cycloalkyl(C_{1-4})alkyl, phenoxy, benzyloxy, benzoyloxy, cyano, isocyano, thiocyanato, isothiocyanato, nitro, -NR^{m}R^n, -NHCOR^m, -NHCONR^{m}R^n, -CONR^{m}R^n, -SO$_2$R^m, -OSO$_2$R^m, -COR^m, -CR^m=NR^n or -N=CR^{m}R^n, in which R^m and R^n are independently hydrogen, C_{1-4} alkyl, halo(C_{1-4})alkyl, C_{1-4} alkoxy, halo(C_{1-4})alkoxy, C_{1-4} alkylthio, C_{3-6} cycloalkyl, C_{3-6} cycloalkyl(C_{1-4})alkyl, phenyl or benzyl, the phenyl and benzyl groups being optionally substituted with halogen, C_{1-4} alkyl or C_{1-4} alkoxy.

The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The Specification does not provide any support for said variables at R2, R3, R4, R5, X and Y positions. Pages 28-31 of the Specification describe starting materials and methods for synthesis of compounds wherein Y=H, X=Cl, R1=unsubstituted alkyl, R2=H, R3 and R4=CH3, R5=alkyl unsubstituted and substituted with hydroxyl, alkoxy, but does not describe or list any reagents wherein compounds can be used to synthesis compounds where R2, R3, R4, R5, X and Y as listed above.

Pursuant to *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988), one considers the following factors to determine whether undue experimentation is required: (A) The breadth of the claims; (B) The nature of the invention; (C) The state of the prior art; (D) The level of one of ordinary skill; (E) The level of predictability in the art; (F) The amount of direction provided by the inventor; (G) The existence of working examples; and (H) The quantity of experimentation needed to make or use the invention based on the content of the disclosure. Some experimentation is not fatal; the issue is whether the amount of experimentation is "undue"; see *In re Vaeck*, 20 USPQ2d 1438, 1444.

The analysis is as follows:

(1) Breadth of claims: Scope of the compounds. Owing to the range of many variables,

millions of highly substituted pyridyloxyalkyl amides compounds are embraced.

(2) The nature of the invention: The invention is a highly substituted pyridyloxyalkyl amides compounds.

(3) Level of predictability in the art: It is well established that "the scope of enablement varies inversely with the degree of unpredictability of the factors involved," and chemical reactivity (which is affected by determinants such as substituent effects, steric effects, bonding, molecular geometry, etc) is generally considered to be an unpredictable factor. See *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970).

(4) Direction or Guidance: That provided is very limited. Applicant shows a general synthesis of compounds of application's general formula I. Pages 28-31 of the Specification describes starting materials and methods for synthesis of compounds wherein Y=H, X=Cl, R1=unsubstituted alkyl, R2=H, R3 and R4=CH3, R5=alkyl unsubstituted and substituted with hydroxyl, alkoxy, but does not describe or list any reagents wherein compounds can be used to synthesis compounds where R2, R3, R4, R5, X and Y as listed above. Pages 28-31 only describe two (2) examples of the entire claimed genus - Examples 1 and 2. There is limited evidence in the Specification of the example compounds that only covers no or a small portion of the substituents claimed of formula 1. Thus, there is no specific direction or guidance regarding said compounds specifically mentioned in Scope.

The specification does not provide any support for the synthesis of compounds, wherein R2, R3, R4, R5, X and Y being and substituted by the following:

X and Y are independently C_{1-4} alkyl, halo(C_{1-4})alkyl, C_{2-4} alkenyl, halo(C_{2-4})alkenyl, C_{2-4} alkynyl, halo(C_{2-4})alkynyl, C_{1-4} alkoxy, halo(C_{1-4})alkoxy, -S(O)$_n$(C_{1-4})alkyl where n is 0, 1 or 2 and the alkyl group is optionally substituted with fluoro, -OSO$_2$(C_{1-4})alkyl where the alkyl group is optionally substituted with fluoro, cyano, nitro, C_{3-6} alkoxycarbonyl, -CONR'R'', -COR', -NR'COR'', -NR'CO$_2$R''' where R' and R'' are independently H or C_{1-4} alkyl and R''' is C_{1-4} alkyl, or optionally substituted phenyl, or Y is H;

R_2 is C_{1-4} alkyl, C_{1-4} alkoxymethyl or benzyloxymethyl in which the phenyl ring of the benzyl moiety is optionally substituted with C_{1-4} alkoxy;

R_3 and R_4 are independently H, C_{2-3} alkenyl or C_{2-3} alkynyl provided that both are not H and that when both are other than H their combined total of carbon atoms does not exceed 4, or R_3 and R_4 join with the carbon atom to which they are attached to form a 3 or 4 membered carbocyclic ring optionally containing one O, S or N atom and optionally substituted with halo or C_{1-4} alkyl; and

R_5 is H, C_{1-4} alkyl or C_{3-6} cycloalkyl in which the alkyl or cycloalkyl group is optionally substituted with halo, cyano, C_{1-4} alkylcarbonyloxy, aminocarbonyloxy, mono- or di(C_{1-4})alkylaminocarbonyloxy, -S(O)$_n$(C_{1-6})alkyl where n is 0, 1 or 2, triazolyl, tri(C_{1-4})alkylsilyloxy, optionally substituted phenoxy, optionally substituted thienyloxy, optionally substituted benzyloxy or optionally substituted thienylmethoxy, or

R_5 is optionally substituted phenyl, optionally substituted thienyl or optionally substituted benzyl, in which the optionally substituted phenyl and thienyl rings of the X, Y and R_5 values are optionally substituted with one, two or three substituents selected from halo, hydroxy, mercapto, C_{1-4} alkyl, C_{2-4} alkenyl, C_{2-4} alkynyl, C_{1-4} alkoxy, C_{2-4} alkenyloxy, C_{2-4} alkynyloxy, halo(C_{1-4})alkyl, halo(C_{1-4})alkoxy, C_{1-4} alkylthio, halo(C_{1-4})alkylthio, hydroxy(C_{1-4})alkyl, C_{1-4}alkoxy(C_{1-4})alkyl, C_{3-6} cycloalkyl, C_{3-6} cycloalkyl(C_{1-4})alkyl, phenoxy, benzyloxy, benzoyloxy, cyano, isocyano, thiocyanato, isothiocyanato, nitro, -NR'''R'', -NHCOR''', -NHCONR'''R'', -CONR'''R'', -SO$_2$R'''', -OSO$_2$R'''', -COR''', -CR'''=NR'' or -N=CR'''R'', in which R''' and R'' are independently hydrogen, C_{1-4} alkyl, halo(C_{1-4})alkyl, C_{1-4} alkoxy, halo(C_{1-4})alkoxy, C_{1-4} alkylthio, C_{3-6} cycloalkyl, C_{3-6} cycloalkyl(C_{1-4})alkyl, phenyl or benzyl, the phenyl and benzyl groups being optionally substituted with halogen, C_{1-4} alkyl or C_{1-4} alkoxy.

The availability of the starting material that is needed to prepare the invention as claimed is at issue here…As per MPEP 2164.01 (b). A key issue that can arise when determining whether the specification is enabling is whether the starting materials or apparatus necessary to a make the invention are available. In the biotechnical area, this is often true when the product or process requires a particular strain of microorganism and when the microorganism is available only after extensive screening. The Court *in re Ghiron*, 442 F.2d 985, 991, 169 USPQ 723, 727 (CCPA 1971), made it clear that if the practice of a method requires a particular apparatus, the application must provide a sufficient disclosure of the apparatus if the apparatus is not readily available. The same can be said if certain chemicals are required to make a compound or practice a chemical process. *In re Howarth*, 654 F.2d 103, 105, 210 USPQ 689, 691 (CCPA 1981).

(5) State of the Prior Art: These compounds are substituted pyridyloxyalkyl amides compounds wherein Y=H, X=Cl, R1=unsubstituted alkyl, R2=H, R3 and R4=CH3, R5=alkyl unsubstituted and substituted with hydroxyl, alkoxy, which are well documented in the art. So far as the examiner is aware, no substituted pyridyloxyalkyl amides compounds of general formula 1 wherein R2, R3, R4, R5, X and Y equals:

X and Y are independently C_{1-4} alkyl, halo(C_{1-4})alkyl, C_{2-4} alkenyl, halo(C_{2-4})alkenyl, C_{2-4} alkynyl, halo(C_{2-4})alkynyl, C_{1-4} alkoxy, halo(C_{1-4})alkoxy, -S(O)$_n$(C_{1-4})alkyl where n is 0, 1 or 2 and the alkyl group is optionally substituted with fluoro, -OSO$_2$(C_{1-4})alkyl where the alkyl group is optionally substituted with fluoro, cyano, nitro, C_{1-4} alkoxycarbonyl, -CONR'R", -COR', -NR'COR", -NR'CO$_2$R"' where R' and R" are independently H or C_{1-4} alkyl and R"' is C_{1-4} alkyl, or optionally substituted phenyl, or Y is H;

R_2 is C_{1-4} alkyl, C_{1-4} alkoxymethyl or benzyloxymethyl in which the phenyl ring of the benzyl moiety is optionally substituted with C_{1-4} alkoxy;

R_3 and R_4 are independently H, C_{2-3} alkenyl or C_{2-3} alkynyl provided that both are not H and that when both are other than H their combined total of carbon atoms does not exceed 4, or R_3 and R_4 join with the carbon atom to which they are attached to form a 3 or 4 membered carbocyclic ring optionally containing one O, S or N atom and optionally substituted with halo or C_{1-4} alkyl; and

R_5 is H, C_{1-4} alkyl or C_{3-6} cycloalkyl in which the alkyl or cycloalkyl group is optionally substituted with halo, cyano, C_{1-4} alkylcarbonyloxy, aminocarbonyloxy, mono- or di(C_{1-4})alkylaminocarbonyloxy, -S(O)$_n$(C_{1-6})alkyl where n is 0, 1 or 2, triazolyl, tri(C_{1-4})alkylsilyloxy, optionally substituted phenoxy, optionally substituted thienyloxy, optionally substituted benzyloxy or optionally substituted thienylmethoxy, or

R_5 is optionally substituted phenyl, optionally substituted thienyl or optionally substituted benzyl, in which the optionally substituted phenyl and thienyl rings of the X, Y and R_5 values are optionally substituted with one, two or three substituents selected from halo, hydroxy, mercapto, C_{1-4} alkyl, C_{2-4} alkenyl, C_{2-4} alkynyl, C_{1-4} alkoxy, C_{2-4} alkenyloxy, C_{2-4} alkynyloxy, halo(C_{1-4})alkyl, halo(C_{1-4})alkoxy, C_{1-4} alkylthio, halo(C_{1-4})alkylthio, hydroxy(C_{1-4})alkyl, C_{1-4}alkoxy(C_{1-4})alkyl, C_{3-6} cycloalkyl, C_{3-6} cycloalkyl(C_{1-4})alkyl, phenoxy, benzyloxy, benzoyloxy, cyano, isocyano, thiocyanato, isothiocyanato, nitro, -NR^{m}R^n, -NHCOR^m, -NHCONR^{m}R^n, -CONR^{m}R^n, -SO$_2$R^m, -OSO$_2$R^m, -COR^m, -CR^m=NR^n or -N=CR^{m}R^n, in which R^m and R^n are independently hydrogen, C_{1-4} alkyl, halo(C_{1-4})alkyl, C_{1-4} alkoxy, halo(C_{1-4})alkoxy, C_{1-4} alkylthio, C_{3-6} cycloalkyl, C_{3-6} cycloalkyl(C_{1-4})alkyl, phenyl or benzyl, the phenyl and benzyl groups being optionally substituted with halogen, C_{1-4} alkyl or C_{1-4} alkoxy.

of any kind have been made or used.

It is not trivial to experimentally interchange any and all of the many substituents

that exist. As described by F. Zaragoza Dörwald, most organic syntheses fail initially and chemical research is highly inefficient due to chemists spending most of their time "finding out what went wrong and why". Therefore, most syntheses of organic compounds are labor-intensive and demanding. Additionally, most final synthetic routes to desired organic molecules are usually very different from initially planned routes. A highly skilled chemist can agree that for many successful organic compounds made, many failures are encountered and experimental repetition is common. This also contributes to the burden and unpredictability of the syntheses of said compounds. (see "Side Reactions in Organic Synthesis: A Guide to Successful Synthesis Design" 2005 Wiley-VCH Verlag GmbH & Co. KGaA, Wienheim.

(6) Working Examples: Applicant shows examples 1 and 2 on pages 28-31, but no working examples were shown wherein R2, R3, R4, R5, X and Y equal aforementioned substituents have been made or used of any kind.

(7) Skill of those in the art: The ordinary artisan is highly skilled, e.g. a masters or PhD level chemist.

(8) The quantity of experimentation needed: Since there are very limited working examples as described above, the amount of experimentation is expected to be high and burdensome.

Due to the level of unpredictability in the art, the very limited guidance provide,

and the lack of working examples, the Applicant has shown lack of enablement for the groups noted.

MPEP 2164.01(a) states, "A conclusion of lack of enablement means that, based on the evidence regarding each of the above factors, the specification, at the time the application was filed, would not have taught one skilled in the art how to make and/or use the full scope of the claimed invention without undue experimentation. *In re Wright*, 999 F.2d 1557,1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993)." That conclusion is clearly justified here.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

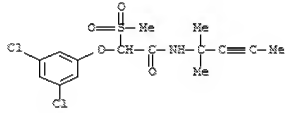
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

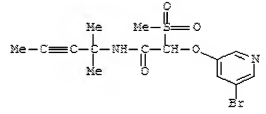
Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. US 2007/0042996 A1 (10/558,116) in view of US

2006/0217346 A1. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following.

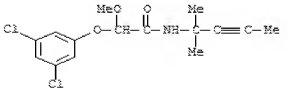
The instant applicant claims compounds, fungicidal compositions, a process of making and a method of treating using compounds of Formula 1, wherein R1, R3, R4, R5=CH3, R2=H and substituted pyridinyl.

2007/0042996 discloses compounds, fungicidal compositions, a process of making and a method of treating using compounds of Formula 1, wherein R1, R3, R4, R5=CH3, R2=H and substituted phenyl (see Example 3) and wherein R1, R3, R4, R5=CH3, R2=H and substituted pyridinyl (see Example 6).





2006/0217346 compounds, fungicidal compositions, a process of making and a method of treating using compounds of Formula 1 wherein R1, R3, R4, R5=CH3, R2=H and substituted phenyl (see Example 1).



2007/0042996 differs from the instant application at the methine carbon: an –CH-S(O)2-CH3 versus Applicant's –CH-O-CH3. 2006/0217346 teaches compounds of Formula 1 wherein R1, R3, R4, R5=CH3, R2=H and substituted phenyl (see) where the methane position is -CH-O-CH3 is interchangeable with -CH-S(O)2-CH3. In other words, the combination of these two references teaches the equivalency of -CH-O-CH3 and -CH-S(O)2-CH3. Thus, said claims are rejected under obvious-type double patenting.

Additionally, the same argument can be made for the interchangeability of phenyl versus pyridinyl using said reference. Said references teach the equivalency of phenyl and pyridinyl.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Mabry, PhD whose telephone number is (571) 270-1967. The examiner can normally be reached on M-F from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, PhD, can be reached on (571) 272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/John Mabry, PhD/
Examiner
Art Unit 1625

/Rita J. Desai/
Primary Examiner, Art Unit 1625